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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,508	02/13/2004	David G. Clark	5853-387	8894
30448	7590	07/06/2005		
AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188				
EXAMINER COLE, MONIQUE T				
ART UNIT		PAPER NUMBER		
1743				

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/779,508

Applicant(s)

CLARK ET AL.

Examiner

Monique T. Cole

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-27 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 & 27 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,367,899 to Mookherjee et al. (herein referred to as “Mookherjee”).

Mookherjee teaches a system for perfume creation using aroma emission analysis from a living fruit and flower in close proximity. The invention attempts to overcome the difficulty of capturing and reproducing actual aroma ingredients of living flowers or fruits in an effort to optimize the marketing of perfume compositions based on living fruit/flower components in conjunction with one another. See col. 1, lines 34-50. The inventor had done previous studies where the different volatile components of flowers were measured in the representative amounts. See col. 1, line 51-col. 2, line 12.

The Mookherjee process comprises quantitatively and qualitatively analyzing the aroma emitted and rates of emission of the aroma of components from a living plant/flower; preparing one or more perfume compositions using the results of the analysis to mix the major components found in the analysis. In particular, a rose, carnation, lily, orange and pineapple are used in the process. See col. 3, line 1-col. 4, line 40. The derived fragrance may be incorporated into encapsulated products (col. 13, line 39), or paper/linen products such a fabric softening dryer

Art Unit: 1743

sheets (col. 12, lines 65-66). The perfume may also be incorporated into a aqueous diluent such as non-toxic alcohols or non-toxic glycol (col. 13, lines 35-37).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mookherjee.

Mookherjee differs from the instant claim in that it does not expressly disclose a petunia plant as a plant from which a perfume is derived. However, it would have been obvious to one having skill in the art to use any fragrant living plant, as Mookherjee broadly discloses living plants/flowers, with the expectation of being able to apply the Mookherjee methodology to derive a fragrance.

5. Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Mookherjee in view of USP 4,868,339 to Christenson et al. (herein referred to as "Christenson").

Mookherjee teaches that the diluent may be a non-toxic alcohol or glycol, but does not expressly teach glycerol.

Christenson teaches that glycol and glycerol are functionally equivalent as perfume diluents. Thus, it would have been obvious to one having skill in the art to replace the glycol of Mookherjee with the glycerol of Christenson and expect to derive a suitable fragrance composition.

Allowable Subject Matter

6. Claims 9-11 are allowed.

Response to Arguments

7. Applicant's arguments filed 4/14/2005 have been fully considered but they are not persuasive.

Applicant's arguments against Mookherjee as applied in the 35 USC 102(b) rejection are 1) neither methods nor compositions require a plant to be enclosed in a 3-dimensional space; 2) the reference does not teach or disclose any of the compositions taught by applicant's or any of the methods to produce such aromas; 3) the reference uses a combination of a fruit and a flower, whereas the claimed invention requires only a plant.

With regard to applicant's first argument, the fact that Mookherjee has an enclosed plant is of no consequence. This is not excluded by the instant claims that contain open-type transitional language. With regard to applicant's second argument, applicant has provided no express reference to what applicant contends is lacking in the Mookherjee reference, so it is hard to rebut applicant's contention other than by saying it is the Examiner's position that the Mookherjee reference does meet the limitations of the rejected claims. Lastly, the fact that the instant claims require only a plant is of no consequence, as the claims do not preclude the addition of other components or steps, in the composition & method claims, respectively.

Applicant further argues that Mookherjee, as applied against claim 4, does not teach petunia. However, absent any evidence to the contrary, it would have been obvious to one having skill in the art to use any fragrant living plant, as Mookherjee broadly discloses living plants/flowers, with the expectation of being able to apply the Mookherjee methodology to

Art Unit: 1743

derive a fragrance. Moreover, with regard to the combination of Mookherjee and Christenson, it is the Examiner's position that it would have been obvious to one having skill in the art to replace the glycol of Mookherjee with the glycerol of Christenson and expect to derive a suitable fragrance composition, absent any evidence to the contrary.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

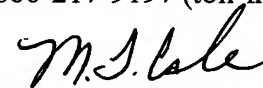
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 571-272-1255. The examiner can normally be reached on Monday, Tuesday & Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Monique T. Cole
Primary Examiner
Art Unit 1743

mtc